IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE M.H.S. ANSARI

AND
THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

WRIT PETITION Nos.19408 and 19429 of 2004

W.P.No.19408 of 2004

Between:

Sri B. Konda Chary, S/o. B. Brahmaiah,
R/o. H.No.1-6-195/1, Bapuji Nagar, Musheerabad, Hyderabad.

..... PETITIONER

AND

1.The Assistant Director of Income Tax-Tax (INV), Unit II (2), Hyderabad, Fourth Floor, Annexe Bldgs, Ayakar Bhavan,
Hyderabad-500 004.
2.The Addl. Director of Income Tax (Inv.), Unit II, Hyderabad.
(R2 is impleaded as per court order dt. 10-11-2004 in WPMP 27256 of 2004)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of a writ of mandamus declaring the action of the respondents in withdrawing the funds from petitioner's S.B. Account No.1314 with Corporation Bank, Jubilee Hills, Hydeabad as illegal, arbitrary and mala fide and without jurisdiction and violative of Articles 14, 21 and 300-A of the Constitution of India and further direct the respondents to forthwith refund the amount with interest at the rate of 18% per annum.

Counsel for the Petitioner: Mr.M.V.DURGA PRASAD

Counsel for the Respondents: Mr.S.R.ASHOK,

Senior S.C. for I.T. Dept.,

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W. P. No.19429 of 2004

Between:

B.Srinivasa rao, S/o.Sri Venkateswara Rao,
R/o.601, Krishna Block, Divya Shakthi Apartments,
Navodaya colony, Yellareddyguda, Hyderabad.

..... PETITIONER

AND

1.The Asst. Director of Income Tax - Tax (INV), unit II (2), Hyderabad, Fourth floor, Annexe Building,
Ayakar Bhavan, Hyderabad.
2.The Addl. Director of Income Tax (Inv.) Unit II, Hyderabad.
(R2 is impleaded as per court order dt. 10-11-2004 in
WPMP 27251 of 2004)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of a writ of mandamus declaring the action of the respondents in withdrawing the funds from petitioners' S.B. Account No.220 with corporation, Bank, Jubilee Hills, Hyderabad as illegal, arbitrary and mala fide and without jurisdiction and violative of Articles 14, 21 and 300-A of the Constitution of India and further direct the respondents to forthwith refund the amount with interest at the rate of 18% per annum.

Counsel for the Petitioner: Mr.M.V.DURGA PRASAD

Counsel for the Respondents : Mr. S.R.ASHOK,

Senior S.C.FOR I.T. Dept.,

The Court made the following :

COMMON ORDER: (per the Hon'ble Sri Justice M.H.S. Ansari)

As identical questions arise for consideration, the above two writ petitions were taken up analogously and are being disposed of by this common order. For the sake of convenience, we shall refer to the facts in W.P.No.19408 of 2004.

The matter arises under the Income Tax Act, 1961 (for short 'the Act'). A few facts from the pleadings on record need only be stated. They are; that a search and seizure operations under Section 132(1) of the Act were conducted at the business premises of M/s.Sri Aditya Homes Pvt. Ltd., and its Managing Director and Director. In the course of the said search proceedings, some signed blank cheques and pay-in-slips pertaining to the Savings Bank Account No.1314 with Corporation Bank, Jubilee Hills Branch, Hyderabad, of the petitioner were found and were seized. Summons were issued under Section 131 of the Act, and pursuant thereto, the petitioner was examined on oath *inter alia* with respect to the said savings bank account. Based upon the information contained in the documents seized from M/s.Aditya Homes Pvt. Ltd., as also on the information gathered from the statement of the petitioner, the respondent sought authorization under Section 132(1) of the Act from the Additional Director, Income Tax Department, and based upon the warrant of authorization issued under Section 132(1), seized the money lying to the credit of the petitioner in the aforesaid account. The instant writ petition is filed for directions upon the respondent to refund the amount with interest to the petitioner.

Several contentions have been raised in the writ petition and reiterated before this Court by Mr. M.V. Durga Prasad, learned counsel for the petitioner. It is, however, not necessary for us to deal with the same in any detail, as, for the relief claimed in the writ petition, the petitioner has an efficacious alternative remedy under the provisions contained in Section 132B of the Act. To the extent relevant, the provisions in Sections 132 and 132B are extracted hereunder.

132. (1) Where the Director General or Director or the Chief Commissioner or Commissioner or any such Joint Director or Joint Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession, has reason to believe that –

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(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then,-

A. the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorize any Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or

B. such Joint Director, or Joint Commissioner, as the case may be, may authorize any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer,

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(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;

132B. (1) The assets seized under Section 132 or relinquished under Section 132A may be dealt with in the following manner, namely:-

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Provided that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized.

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorizations for search under Section 132 or for requisition under Section 132A, as the case may be, was executed;

It appears that such remedy has been availed of by the petitioner, though, without prejudice to his contentions in the instant writ petition.

We are, accordingly, not inclined, for the said reason, to go into the merits of the contention as to whom the seized money belongs, as it is open to the petitioner to pursue the application already filed before the Assessing Officer for release of the amount seized and to satisfy him about the nature and source of acquisition of the said assets.

With regard to the question of jurisdiction, it was contended by Mr. Durga Prasad that no proceeding or action under Section 132 of the Act was initiated against the petitioner and, therefore, the respondent has no jurisdiction to take any action

against the petitioner or his property or to take away the amount lying to the credit of the petitioner's savings bank account. It was further contended that under Section 132 (2), there is no power or jurisdiction to attach or to issue garnishee order against third parties.

From the counter affidavit, it will appear that on the basis of the documents seized from the business premises of M/s. Sri Aditya Homes Pvt. Ltd., and based upon further information provided by the petitioner in his statement, the respondent formed a belief that the savings bank account of the petitioner is a benami account of M/s.Sri Aditya Homes Pvt. Ltd. The respondent, thereafter, placed his findings for consideration of the Additional Director of Income Tax (Inv.), Unit-II, who is empowered to issue warrant of authorization under Section 132 (1) of the Act. It also appears from the counter affidavit that the Additional Director of Income Tax (Inv.) came to the conclusion based on the material available on record that he has reason to believe that the savings bank account of the petitioner is the benami account of M/s. Sri Aditya Homes Pvt. Ltd., and that the said company is the beneficial owner of the said bank account, and, therefore, issued warrant of authorization.

Mr. S.R. Ashok, learned Senior Standing Counsel for I.T. Department, has placed before us the files. On perusal of the same, it would appear that the reasons on which the opinion was formed by the Additional Director of Income Tax (Inv.) are contained in the files. Therefore, it cannot be said that based on the information available on record on which such belief was formed and the reasons recorded therein, no reasonable person could have entertained such belief. The basis for exercise of power under Section 132(1) of the Act has to be the formation of belief and the belief has to be formed on the basis of receipt of information by the Authorising Officer. The writ Court cannot examine either the sufficiency or adequacy of the material based on which such belief can be formed. It is the existence of information and its relevance, and the formation of belief that is open to judicial scrutiny. Viewed in this light, it cannot be said that either there was no information or that the information based on which a belief could be formed has no nexus i.e., rational connection or relevant bearing to the formation of the belief. The reasons which led the Authorising Officer to form the belief have been recorded by him in the files placed before us. We, therefore, find no substance in the contention that the respondent had no jurisdiction to seize the amount lying in the account. The authorization itself has not been questioned.

We are further of the view that the other contention of the petitioner as to the jurisdiction of the respondent to seize the amount lying in the account of the petitioner founded on the ground that only a prohibitory order under sub-Section (3) of Section 132 of the Act could have been issued but money could not have been seized is misconceived. The reliance upon the decisions pertaining to Fixed Deposit Receipts (FDRs) is in-appropriate to the case on hand.

For the reasons aforesaid, the writ petition is liable to be and is accordingly dismissed. However, it is clarified that this order shall not preclude the petitioner from seeking such alternative remedies as are open to him in law and as he may be advised for release of the seized amount.

The files submitted for our perusal by the learned Senior Standing Counsel for the Department be returned to him forthwith.

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(M.H.S.ANSARI, J.)

31st December 2004.

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(T.CH. SURYA RAO, J.)

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To

1.The Assistant Director of Income Tax-Tax (INV), Unit II (2), Hyderabad, Fourth Floor, Annexe Bldgs, Ayakar Bhavan,
Hyderabad-500 004.
2.The Addl. Director of Income Tax (Inv.), Unit II, Hyderabad.
3.Two CD copies.